

*See also  
Vol. 3191*

No. 18160 ✓

**United States Court of Appeals**  
FOR THE NINTH CIRCUIT

FRANK STRANGWAY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

On Appeal from United States District Court  
Southern District of California  
Southern Division

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PETITION FOR REHEARING

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IN THE UNITED STATES COURT OF APPEALS

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Appellant, FRANK STRANGWAY, hereby petitions the Honorable United States Court of Appeals for the Ninth Circuit, for a rehearing in the above entitled matter and bases his petition on the following grounds and circumstances:

Appellant earnestly contends that the court should evaluate the evidence in this case in order to determine whether there was sufficient evidence to support the verdict.

It is appellant's belief that the case of Donaldson vs. US, 9 Cir. , 248 F. 2d 364, 367 is not in point in that in the Donaldson case evidence adduced to support the convictions was not transcribed and made a part of the record on appeal, whereas in the instant matter, appellant was convicted on only one count, and all of the evidence offered in support of that count was transcribed and made a part of the record.

Appellant also respectfully requests the court to reconsider its ruling in respect to appellant's contention that the verdict was coerced.

The record discloses that no opportunity was given appellant to object to the instruction in question until after the jury had retired. (Rep. Tr., p. 418, ll. 3-25, p. 420, ll. 1-12).

The trial court gave the instruction without discussing it with appellant prior to the commencement of the reading of the instructions and immediately upon the conclusion of the instruction the jury was asked to once more retire.

However, on the merits, appellant would ask this court to review its opinion on the grounds that US vs. Kawakits, S. D. Cal., 96 F. Supp. 824, 855-856, is not identical with the instruction that appellant here questions in that, in the instant case the jury was asked to consider matters outside the evidence in arriving at a verdict and such instructions have been disapproved as shown by cases set forth in appellant's opening brief.

WHEREFORE, Appellant respectfully prays that a rehearing be granted in the above entitled matter.

RICHARD E. ADAMS

Attorney for Appellant

CERTIFICATE IN SUPPORT OF  
PETITION FOR REHEARING

STATE OF CALIFORNIA )  
COUNTY OF SAN DIEGO ) <sup>SS</sup>

RICHARD E. ADAMS, being first duly sworn, deposes and says: That he is the attorney for the appellant, Frank Strangway, and that in his judgment the matters set forth in appellant's petition for rehearing are well founded and present a substantial question of law and that the petition for rehearing is not interposed for delay.

/s/ RICHARD E. ADAMS

Subscribed and sworn to before me  
this 5th day of January, 1963.

HELEN JEAN TAFF  
My commission expires March 21, 1964.

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Notary Public in and for the  
County of San Diego, State of  
California

